



Legal Office
P.O. Box 942707
Sacramento, CA 94229-2707
(916) 795-3675, FAX (916) 795-3659

November 17, 2008

AGENDA ITEM 3

TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

- I. SUBJECT:** Proposed Policy on Disclosure of Communications
- II. PROGRAM:** Administration
- III. RECOMMENDATION:** Staff recommends that the Committee adopt the policies described in Section B, which are based, in part, on policies adopted by CalSTRS. If the Committee accepts the Staff recommendation, Staff will provide actual policy language at the next Committee meeting.
- IV. ANALYSIS:**

A. Executive Summary

California public officials and employees are governed by a myriad of statutes, regulations, and policies that restrict gifts, campaign contributions and communications. These rules are intended to limit improper influence and to improve transparency in governmental decision-making. As the Committee will recall, the California State Teachers Retirement System (CalSTRS) has, over the past two years, taken several actions to adopt policies and regulations to supplement the ethical rules imposed by state law. CalPERS legal staff has monitored and periodically informed the Committee of CalSTRS' activities in this area.

At the Committee's meeting in May, 2008, the Committee expressed an interest in discussing and considering a policy that would require disclosure of communications between board members and third parties and between board members and CalPERS staff. The staff proposed a framework for such a policy, modeled after the policy adopted by CalSTRS, at the Committee's September

2008 meeting. At the Committee's September 2008 meeting, the Committee requested staff to bring back additional information, preferably in the form of a matrix, to assist the Committee in understanding what is being proposed and the additional disclosure obligations that will be placed on board members and staff.

B. Staff's Recommendations Regarding a Policy on Disclosure of Communications

Staff recommends adopting a policy on the disclosure of communications as outlined in the September 2008 agenda item, which is based, in large part on the policy adopted by CalSTRS, and as further detailed in this agenda item.

As set forth in the September 2008 agenda item and the attachments to this agenda item, Board members are already required, under current law, to disclose certain communications regarding prospective investment transactions. The proposed policy would not increase, in any way, these existing disclosure obligations on the part of Board members.

The proposed policy would, however, increase the disclosure obligations applicable to financially interested parties; that is, financially interested parties would be required, under the proposed policy, to disclose communications between the financially interested party and a board member regarding investment transactions that do not require Investment Committee approval. The proposed policy would also create reporting obligations for CalPERS staff. Under the proposed policy, staff would be required to report all Board member initiated conversations about prospective investment transactions, the hiring, termination or funding of an investment money manager, and prospective vendor contracts, other than simple requests for information by the Board member. We have vetted this proposed new reporting obligation with CalPERS Executive Staff and have obtained their agreement that the reporting obligations will not be overly burdensome on their respective staff.

The September 2008 agenda item, which contains a description of current law, the policies adopted by CalSTRS and staff's recommendation for a CalPERS policy, is attached as Attachment 1.

Attachment 2, "DISCLOSURE OF COMMUNICATIONS – CURRENT LAW" is a matrix explaining the disclosure requirements under current law applicable to communications about investment transactions and communications about vendor contracts, including scenarios under which disclosure would or would not be required.

Attachment 3, "DISCLOSURE OF COMMUNICATIONS – PROPOSED POLICY – Investment Transactions" is a matrix explaining the disclosure requirements under the proposed policy and under CalSTRS policy applicable to communications about investment transactions, including scenarios under which disclosure would or would not be required.

Attachment 4, "DISCLOSURE OF COMMUNICATIONS – PROPOSED POLICY – Vendor Contracts" is a matrix explaining the disclosure requirements under the proposed policy and under CalSTRS policy applicable to communications about vendor contracts, including scenarios under which disclosure would or would not be required.

Staff recommends the Committee adopt a policy on disclosure of communications consistent with this and the September 2008 agenda items. Upon consideration and direction from the Committee, staff will provide actual policy language for the Committee's consideration at its next meeting.

V. STRATEGIC PLAN:

This supports Goal II of the Strategic Plan which calls for CalPERS, as an organization to "foster a work environment that values quality, respect, diversity, integrity, openness, communication, and accountability."

GINA M. RATTO
Deputy General Counsel

PETER H. MIXON
General Counsel